

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 26th day of April, two thousand sixteen.

PRESENT:

RALPH K. WINTER,
JOSÉ A. CABRANES,
SUSAN L. CARNEY,
Circuit Judges.

JIANG LIN,
Petitioner,

v.

15-990
NAC

LORETTA E. LYNCH, UNITED STATES
ATTORNEY GENERAL,
Respondent.

FOR PETITIONER: Lee Ratner, Law Offices of Michael Brown, New York, NY.

FOR RESPONDENT: Benjamin C. Mizer, Principal Deputy Assistant Attorney General; Jennifer P. Williams, Senior Litigation Counsel; Jennifer A. Bowen, Trial Attorney, Office of Immigration Litigation, United States Department of Justice, Washington, D.C.

1 UPON DUE CONSIDERATION of this petition for review of a
2 Board of Immigration Appeals ("BIA") decision, it is hereby
3 ORDERED, ADJUDGED, AND DECREED that the petition for review is
4 DENIED.

5 Petitioner Jiang Lin, a native and citizen of the People's
6 Republic of China, seeks review of a March 10, 2015, decision
7 of the BIA, affirming a January 7, 2013, decision of an
8 Immigration Judge ("IJ") denying Lin's application for asylum,
9 withholding of removal, and relief under the Convention Against
10 Torture ("CAT"). *In re Jiang Lin*, No. A087 772 222 (B.I.A. Mar.
11 10, 2015), *aff'g* No. A087 772 222 (Immig. Ct. N.Y. City Jan.
12 7, 2013). We assume the parties' familiarity with the
13 underlying facts and procedural history in this case.

14 Under the circumstances of this case, we have considered
15 both the IJ's and the BIA's opinions "for the sake of
16 completeness." *Wangchuck v. Dep't of Homeland Sec.*, 448 F.3d
17 524, 528 (2d Cir. 2006). The applicable standards of review
18 are well established. 8 U.S.C. § 1252(b)(4)(B); *Xiu Xia Lin*
19 *v. Mukasey*, 534 F.3d 162, 165-66 (2d Cir. 2008).

20 For asylum applications, like Lin's, governed by the REAL
21 ID Act, the agency may, "[c]onsidering the totality of the
22 circumstances," base a credibility finding "on the demeanor,
23 candor, or responsiveness of the applicant," and on

1 inconsistencies between the applicant's statements and other
2 evidence, "without regard to whether" they go "to the heart of
3 the applicant's claim." 8 U.S.C. § 1158(b)(1)(B)(iii); *Xiu*
4 *Xia Lin*, 534 F.3d at 163-64. "We defer . . . to an IJ's
5 credibility determination unless, from the totality of the
6 circumstances, it is plain that no reasonable fact-finder could
7 make such an adverse credibility ruling." *Xiu Xia Lin*, 534 F.3d
8 at 167.

9 Substantial evidence supports the adverse credibility
10 determination, which was based on internal inconsistencies in
11 Lin's testimony, inconsistencies between his testimony and
12 prior statements, and his demeanor. As an initial matter, the
13 IJ did not err in relying on the record of the credible fear
14 interview. It bore sufficient indicia of reliability. *Ming*
15 *Zhang v. Holder*, 585 F.3d 715, 725 (2d Cir. 2009). The record
16 includes a record of questions asked and answers given, the
17 interview was conducted in Lin's best language, the questions
18 were designed to elicit his asylum claim, and there was no
19 indication that Lin was reluctant to answer questions. *Id.* at
20 723-25. Although Lin's border interview did not bear the same
21 level of reliability, even absent consideration of that
22 interview, substantial evidence supports the IJ's adverse
23 credibility determination. *Xiu Xia Lin*, 534 F.3d at 167.

1 The record supports the agency's conclusion that Lin's
2 testimony was both internally inconsistent and inconsistent
3 with his credible fear interview. He testified that he left
4 China to avoid persecution for distributing Falun Gong flyers,
5 and that he distributed those flyers to spread Falun Gong's
6 message. However, at his credible fear interview, he stated
7 that he distributed flyers to make money. Lin's assertion that
8 he was explaining what he told the police is not compelling;
9 he was responding to the question, "why did you want to
10 distribute the flyers." *Majidi v. Gonzales*, 430 F.3d 77, 80-81
11 (2d Cir. 2005).

12 The adverse credibility determination is further supported
13 by the IJ's demeanor finding, to which we defer. *Id.* at 81 n.1;
14 *Li Hua Lin v. U.S. Dep't of Justice*, 453 F.3d 99, 109 (2d Cir.
15 2006) ("We can be still more confident in our review of
16 observations about an applicant's demeanor where, as here, they
17 are supported by specific examples of inconsistent
18 testimony."). Lin paused before responding to questions about
19 when he met the individual who recruited him to hand out flyers
20 and responded with a series of inconsistent dates. And, he was
21 not responsive when asked how he learned to practice Falun Gong.

22 In light of Lin's inconsistencies and his demeanor, the
23 totality of the circumstances supports the agency's adverse

1 credibility determination. See 8 U.S.C. § 1158(b)(1)(B)(iii);
2 *Xiu Xia Lin*, 534 F.3d at 167. Because asylum, withholding of
3 removal, and CAT relief all relied on the same factual
4 predicate, the adverse credibility determination is
5 dispositive. *Paul v. Gonzales*, 444 F.3d 148, 156-57 (2d Cir.
6 2006).

7 For the foregoing reasons, the petition for review is
8 DENIED. As we have completed our review, any stay of removal
9 that the Court previously granted in this petition is VACATED,
10 and any pending motion for a stay of removal in this petition
11 is DISMISSED as moot. Any pending request for oral argument
12 in this petition is DENIED in accordance with Federal Rule of
13 Appellate Procedure 34(a)(2), and Second Circuit Local Rule
14 34.1(b).

15 FOR THE COURT:
16 Catherine O'Hagan Wolfe, Clerk